

2001 DRAFTING REQUEST**Bill**Received: **10/01/2001**Received By: **rryan**Wanted: **As time permits**

Identical to LRB:

For: **Gary George (608) 251-0101**By/Representing: **Curt Pawlisch**This file may be shown to any legislator: **NO**Drafter: **rryan**May Contact: **Curt Pawlisch**

Addl. Drafters:

Subject: **Correctional System - misc
Criminal Law - miscellaneous**Extra Copies: **MGD**Submit via email: **YES**Requester's email: **Sen.George@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Battery by persons who are detained or committed

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rryan 10/12/2001	hhagen 10/16/2001		_____			
/1			pgreensl 10/16/2001	_____	lrb_docadmin 10/16/2001		
/2	rryan	hhagen	pgreensl	_____	lrb_docadmin	lrb_docadmin	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
	01/02/2002	01/04/2002	01/08/2002	_____	01/08/2002	01/09/2002	

FE Sent For:

<END>

none needed

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/1		1/2 hph 1/4/01	pgreensl 10/16/2001	<u>pg/jf</u>	lrb_docadmin 10/16/2001		
			<u>1/8</u> <u>pg</u>				

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1?	rryan	12 hmk 10/16/01	10/ 16 pg	10/16 pg/16			

FE Sent For:

<END>

Cullen
Weston
Pines
& Bach

Attorneys at Law

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Madison, Wisconsin 53703
(608) 251-0101
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MEMORANDUM

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Of Counsel:
Cheryl Rosen Weston

TO: Members of the Legislative Working Group
on Crime Legislation

FROM: Curt Pawlisch

RE: Felony Battery by Prisoners Held in Custody

DATE: March 24, 2000

On behalf of District 1199W/United Professionals for Quality Health Care, I write to request that you include the attached legislation in the truth-in-sentencing bill under consideration by your working group. The proposal clarifies existing law as it relates to penalties for persons who commit, or threaten to commit, battery while held in custody. Last year, a defendant held at Mendota Mental Health Institute for purposes of a competency determination attacked a member of the staff there. A subsequent review of current law suggests that existing statutes do not adequately address such attacks.

Presently, sec. 940.20(1), Stats., makes it a felony for a prisoner to commit a battery against officers, employees, visitors or other inmates at a state correctional facility or state, county or local detention facility. Our proposed amendment to this section is attached.

The changes are intended to address ambiguities in the existing statute. First, the term "prisoner" is defined to include all prisoners confined to a state prison or other state, county or municipal detention facility, and persons whose liberty has been restricted as a result of being accused of committing a crime. This proposed change would address situations such as occurred at the Mendota Mental Health facility this year. Wisconsin courts have interpreted sec. 940.20(1) to apply to a person who has been committed to Mendota after being determined guilty by reason of mental disease or defect. State v. Skamfer, 176 Wis.2d 304, 500 N.W.2d 369 (Ct. App. 1993). However, the courts have not addressed whether the statute applies to a defendant at Mendota awaiting a competency determination. While the Wisconsin Jury Instructions suggest that the statute would apply in such an instance (WIS JI-

CRIMINAL 1228), the Skamfer decision suggests that defendants are not "prisoners" within the meaning of the statute (a restraint of liberty must be "premised upon a prior finding that he had violated the criminal law.") Skamfer, 176 Wis. 2d at 309.

A second gap in the present form of sec. 940.20(1) also exists with respect to inmates who receive medical treatment outside of their correctional facility. In State v. Cummings, a prisoner who had attempted to commit suicide at Waupun was transferred to UW Hospital. 153 Wis. 2d 603, 451 N.W.2d 463 (Ct. App. 1989). At the hospital, he injured one of the state's correctional officers. In holding that sec. 940.20(1) applied, the court ruled that the prisoner was at a detention facility in that the hospital had become a "precinct" of Waupun in this instance. Had the prisoner committed a battery upon a UW employee, however, sec. 940.20(1) may not have applied because the employee would not be an employee of Waupun but of the UW Hospital. The draft addresses this problem by providing that sec. 940.20(1) applies if a battery occurs to any person regardless of whether they are an employee of a correctional institution.

~~Additionally, the proposed draft broadens sec. 940.20(1) to cover threats of battery made by persons held in custody. This expansion is consistent with the treatment of threats as provided in secs. 940.201, 940.203, 940.205 and 940.207, Stats. In the context of the delivery of medical treatment, which is the perspective brought by District 1199W/UPQHC to this issue, such threats cannot and should not be tolerated.~~

Finally, because language similar to 940.20(1) exists in sec. 946.43(2m), we are proposing to make similar changes to the latter statute.

Your consideration and support of our proposal would be much appreciated.

Mendota patients ambush 2 employees in hostage try

By Jason Shepard

The Capital Times

A union representative for employees at Mendota Mental Health Institute said today that all employees dealing with maximum security patients should be equipped with body alarms.

United Professionals for Quality Health Care/District 1189 rep. Leonore Wilson said Tuesday's attack of two female employees by two men should signal that employees are in danger when they are dealing with maximum security patients.

"I don't believe the public should be led to believe that there were few if any injuries involved," Wilson said, adding that she spoke with a nurse who was choked to the point of unconsciousness by one of the two men involved in the attack.

Union calls for body alarms

The two patients who attacked the employees failed in their plan to take the women hostage and barricade themselves in a secure room.

"To say the least, this was a very traumatic experience," Wilson said. "I also believe that this is another example of the need to get body alarms for these people."

"This is a high security unit, and if these patients are going to be walking around freely within this unit, then by all means, I think the employees need body alarms for their own safety," Wilson said.

At least one of the men involved in the

attack is facing first-degree murder charges in Douglas County, and was at Mendota to be evaluated for his competency before his trial.

Madison police Capt. Luis Yudice confirmed Wednesday that a nurse was choked during the fight, which occurred in the doorway of a break room.

Had the two inmates been successful in getting all the way into the break room, they would have been able to lock themselves in the room and take the two employees hostage.

The two women screamed to attract the attention of other employees, heading off the hostage attempt, Yudice said.

"Apparently (the patients) were attempting to hold them as hostages to negotiate their release," Yudice said.

Greg Van Rybroek, deputy director at Mendota, said the incident was over in a matter of minutes and no one was seriously injured.

Madison police immediately arrested the two men.

Alejandro Rivera, 22, of Spencer was booked into the Dane County Jail Tuesday afternoon on charges of false imprisonment.

Devan J. Melton, 32, of Oshkosh was allegedly the man who choked the nurse. He is tentatively charged with false imprisonment and battery.

Rivera was charged with first-degree intentional homicide on July 6 in Douglas County Circuit Court. It is unknown what criminal charges Melton is facing.

Both men were at Mendota being assessed for their competency before standing trial in their respective counties. A competency assessment for both men will

now take place at the Dane County Jail, Van Rybroek said.

He said the public at large was never in danger because the incident was contained within the maximum security forensic unit.

Van Rybroek said dangerous incidents rarely occur, but are an "unfortunate" reality when dealing with some of the state's most dangerous criminals.

"It's very frightening, obviously," Van Rybroek said. Mendota officials have launched their own investigation into the matter to see if the institute's policies were followed before, during and after the incident.

Van Rybroek also said trauma counselors are available for staff members at the center.

Sandy

**SENATE AMENDMENT ,
TO SENATE SUBSTITUTE AMENDMENT 1,
TO 1999 SENATE BILL 237**

1 At the locations indicated, amend the substitute amendment as follows:

2 1. Page 92, line 25: delete that line.

3 2. Page 93, line 1: delete lines 1 to 4 and substitute:

4 *SECTION 299g. 940.20 (1) of the statutes is renumbered 940.20 (1) (b) and
5 amended to read:

6 940.20 (1) (b) Any prisoner confined to a state prison or other state, county or
7 municipal detention facility who, while in custody, intentionally causes bodily harm
8 ~~or threatens to cause bodily harm to an officer, employee, visitor or another inmate~~
9 ~~of such prison or institution person, without his or her the consent of the person~~
10 ~~harmed or threatened,~~ is guilty of a Class D ~~H~~ felony.

11 SECTION 299h. 940.20 (1) (a) of the statutes is created to read:

12 940.20 (1) (a) In this subsection:

1 1. "Custody" means actual custody in a state prison, a state treatment center,
2 as defined in s. 51.01 (15), or other state, county or municipal correctional or
3 detention facility, or actual or constructive custody by a peace officer or a guard or
4 other employe of a state prison, a state treatment center, as defined in s. 51.01 (15),
5 or other state, county or municipal correctional or detention facility.

6 2. "Prisoner" means a person arrested or confined because he or she has been
7 accused of committing a crime, alleged to be delinquent for committing a crime,
8 convicted of or adjudicated delinquent for committing a crime, or committed under
9 s. 971.17 after being found not guilty of committing a crime by reason of mental
10 disease or defect."

11 3. Page 127, line 23: delete that line.

12 4. Page 128, line 1: delete lines 1 to 3 and substitute:

13 "SECTION 511j. 946.43 of the statutes is renumbered 946.43 (2m) and amended
14 to read:

15 946.43 (2m) ~~Any prisoner confined to a state prison or other state, county or~~
16 ~~municipal detention facility who, while in custody,~~ intentionally does any of the
17 following is guilty of a Class C F felony:

18 (a) ~~Places an officer, employe, visitor or another inmate of such prison or~~
19 ~~institution person~~ in apprehension of an immediate battery likely to cause death or
20 great bodily harm; or

21 (b) ~~Confines or restrains an officer, employe, visitor or another inmate of such~~
22 ~~prison or institution person~~ without the person's consent.

23 SECTION 511k. 946.43 (1m) of the statutes is created to read:

24 946.43 (1m) In this section:

(a) "Custody" means actual custody in a state prison, a state treatment center, as defined in s. 51.01 (15), or other state, county or municipal correctional or detention facility, or actual or constructive custody by a peace officer or a guard or other employe of a state prison, a state treatment center, as defined in s. 51.01 (15), or other state, county or municipal correctional or detention facility.

(b) "Prisoner" means a person arrested or confined because he or she has been accused of committing a crime, alleged to be delinquent for committing a crime, convicted of or adjudicated delinquent for committing a crime, or committed under s. 971.17 after being found not guilty of committing a crime by reason of mental disease or defect."

5. Page 188, line 25: delete "943.20 (3) (d) 2.," and substitute "940.20 (1), 943.20 (3) (d) 2., 946.43,".

6. Page 190, line 9: delete "940.20 (1),".

7. Page 191, line 19: delete "946.43 (intro.),".

8. Page 193, line 4: after "940.09 (1c)," insert "940.20 (1) (a),".

9. Page 193, line 5: after "943.50 (4) (bm)," insert "946.43 (1m),".

10. Page 194, line 1: delete "943.20 (3) (d) 2.," and substitute "940.20 (1), 943.20 (3) (d) 2., 946.43,".

11. Page 195, line 13: delete "940.20 (1),".

12. Page 196, line 23: delete "946.43 (intro.),".

13. Page 198, line 9: after "940.09 (1c)," insert "940.20 (1) (a),".

14. Page 198, line 10: after "943.50 (4) (bm)," insert "946.43 (1m),".

(END)

9/20/01

Curt Pawlisch

~~Back~~ 257-0101

Working w/ Sen. George's office on
a0183 (amendment to AB 3)

responding to drafter's note

- ① Yes, should apply to SVP detainees
- ② Yes on 2nd point

Dan Rosmiller back 1st week in Oct.
new amendment? a redraft?
need to get jacket back to redraft

Dan Rosmiller 10/1/01
OK to speak w/ Curt Pawlisch

Amendment d Bill?

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0183/1dn
RLR:hmh:pg

May 7, 2001

Senator George:

1. Please note that a person who is committed to the department of health and family services as a sexually violent person is not a prisoner or detainee for purposes of the crimes covered by this amendment, because the person is confined under a civil commitment process rather than for the commission of an offense. Please let me know if you would like the crimes to apply to a person committed under chapter 980 as well.
2. The criminal provision that prohibits a prisoner from throwing bodily substances, s. 946.43 (2m), stats., was enacted in May 2000, after the date on Curt Pawlisch's memo requesting changes to ss. 940.20 (1) and 946.43, stats. In drafting the amendment I assumed that you wanted this amendment to apply the same changes concerning the definition of who constitutes a "prisoner" to the new crime under s. 946.43 (2m), stats., as are applied to the crime of threatening or restraining an employee of a prison or institution under s. 943.43, 1999 stats., now s. 946.43 (1m), stats.

Please contact me with any questions or requests for changes to the amendment.

Robin Ryan
Legislative Attorney
Phone: (608) 261-6927
E-mail: robin.ryan@legis.state.wi.us

In 10/12/01

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 AN ACT ...; relating to: ???

Analysis by the Legislative Reference Bureau

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

2

(END)

Same as LRB-2463/2

11/21/01

Curt Pawlisch
LRB 2463/2

251-0101

Ron Sklansky (Leg. Council) concerned
that too broad b/c covers people
after just an arrest

Could be to

- (1) Eliminate arrest from def. of "custody"
so just applies to those who
are confined
- (2) Since is already a Class D felony
to batter police officer acting
in official capacity - could
just specify that can't be
convicted under both 940.20(1) & (2)

Wait for further instructions

11/30/01

Go with 2nd option - can be charged w/
both, but can't be convicted of both

Sklansky
(Perhaps use lang. from drunk driving
re duplicate charging & imm. conviction)

In 12/10/01

2001 BILL

RMR

Regenerate
1 AN ACT *to renumber and amend* 940.20 (1); *to amend* 940.20 (1) (title), 946.43
2 (title), 946.43 (1m) and 946.43 (2m) (a); and *to create* 940.20 (1) (a) and 946.43
3 (1g) of the statutes; **relating to:** battery or assault by a prisoner or detainee and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law criminalizes several types of assaultive behavior by prisoners:

1. It is a crime for a prisoner to cause bodily harm intentionally to an officer, employee, visitor, or another inmate of a prison or other type of detention facility without the person's consent (battery by a prisoner). The maximum penalty for battery by a prisoner is a fine not to exceed \$10,000; a term of confinement in prison followed by a term of extended supervision that together may not exceed ten years; or both.

2. It is a crime for a prisoner to place an officer, employee, visitor, or another inmate of a prison or other type of detention facility in fear of immediate and great bodily harm, or to confine or restrain the officer, employee, visitor, or other inmate. The maximum penalty for these offenses is a fine not to exceed \$10,000; a term of confinement followed by a term of extended supervision that together may not exceed 15 years; or both.

3. It is a crime for a prisoner to throw or expel certain bodily substances at an officer, employee, visitor, or other inmate of a prison or other type of detention facility. The maximum penalty for throwing or expelling bodily substances is a fine not to

BILL

exceed \$10,000, a term of confinement followed by a term of extended supervision that together may not exceed two years, or both.

The term "prisoner" is not defined for any of these assaultive crimes by prisoners. However, courts have held that in the context of the crime of battery by a prisoner, a "prisoner" is a person whose liberty is restrained as a result of a violation of the law or as a means of enforcing the law, and that "prisoner" includes a person who is committed to the department of health and family services upon a finding of not guilty by reason of mental disease or defect, as well as a person who is confined upon revocation of probation. See *In the Interest of C.D.M.*, 125 Wis. 2d 170, at 172-173 (1985); *State v. Skamfer*, 176 Wis. 2d 304 (App. 1993); *State v. Fitzgerald*, 233 Wis. 2d 584 (App. 2000).

This bill applies the prohibitions against assaultive behavior to both prisoners and detainees and defines a "prisoner or detainee" as a person who is arrested or confined because he or she has been accused of committing a crime, alleged delinquent for committing a crime, alleged to be a sexually violent person, convicted or adjudicated delinquent for committing a crime, or committed to the custody of the department of health and family services upon being found not guilty of a crime by reason of mental disease or defect or upon being found to be a sexually violent person.

The bill removes the requirement that the victim of the assaultive crimes be an officer, employee, visitor, or other inmate, and instead criminalizes a prisoner's or detainee's assaultive behavior directed at any other person. The bill also clarifies that the crimes prohibiting assaultive behavior by a prisoner apply to acts of a prisoner or detainee that take place while the prisoner or detainee is in the custody of a law enforcement officer, prison guard, or employee of another detention facility or of a state treatment facility, regardless of whether the prisoner or detainee is on the grounds of a prison, other detention facility, or state treatment facility when the prohibited act occurs.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 940.20 (1) (title) of the statutes is amended to read:

2 940.20 (1) (title) BATTERY BY PRISONERS OR DETAINEES.

3 SECTION 2. 940.20 (1) of the statutes is renumbered 940.20 (1) (b) and amended
4 to read:

5 940.20 (1) (b) Any prisoner ~~confined to a state prison or other state, county or~~
6 ~~municipal detention facility or detainee~~ who, while in custody, intentionally causes
7 ~~bodily harm to an officer, employee, visitor or another inmate of such prison or~~

BILL

1 ~~institution a person~~, without ~~his or her~~ the consent of the person, is guilty of a Class
2 D felony.

3 **SECTION 3.** 940.20 (1) (a) ^{and (c)} of the statutes ^{are} is created to read:

4 940.20 (1) (a) In this subsection:

5 1. "Custody" means actual custody in a state prison, a state treatment facility,
6 as defined in s. 51.01 (15), a facility for the care of sexually violent persons, as
7 specified in s. 980.065, or another state, county, or municipal correctional or
8 detention facility, or actual or constructive custody of a peace officer or a guard or
9 another employee of a state prison, a state treatment facility, a facility for the care
10 of sexually violent persons, or another state, county, or municipal correctional or
11 detention facility.

12 2. "Prisoner or detainee" means a person arrested or confined because he or she
13 has been accused of committing a crime, alleged delinquent for committing a crime,
14 alleged to be a sexually violent person, convicted of or adjudicated delinquent for
15 committing a crime, committed under s. 971.17 after being found not guilty of
16 committing a crime by reason of mental disease or defect, or committed under s.
17 980.06 as a sexually violent person.

18 **SECTION 4.** 946.43 (title) of the statutes is amended to read:

19 **946.43 (title) Assaults by prisoners or detainees.**

20 **SECTION 5.** 946.43 (1g) of the statutes is created to read:

21 946.43 (1g) In this section:

22 (a) "Custody" means actual custody in a state prison, a state treatment facility,
23 as defined in s. 51.01 (15), a facility for the care of sexually violent persons, as
24 specified in s. 980.065, or another state, county, or municipal correctional or
25 detention facility, or actual or constructive custody by a peace officer or a guard or

(c) A person may not be convicted under both par. (b) and sub. (2) for the same act.

BILL

1 another employee of a state prison, a state treatment facility, a facility for the care
2 of sexually violent persons, or another state, county, or municipal correctional or
3 detention facility.

4 (b) "Prisoner or detainee" means a person arrested or confined because he or
5 she has been accused of committing a crime, alleged delinquent for committing a
6 crime, alleged to be a sexually violent person, convicted of or adjudicated delinquent
7 for committing a crime, committed under s. 971.17 after being found not guilty of
8 committing a crime by reason of mental disease or defect, or committed under s.
9 980.06 as a sexually violent person.

10 **SECTION 6.** 946.43 (1m) of the statutes is amended to read:

11 946.43 (1m) Any prisoner ~~confined to a state prison or other state, county or~~
12 ~~municipal detention facility or detainee~~ who, while in custody, intentionally does any
13 of the following is guilty of a Class C felony:

14 (a) ~~Places an officer, employee, visitor or another inmate of such prison or~~
15 ~~institution~~ a person in apprehension of an immediate battery likely to cause death
16 or great bodily harm; or

17 (b) ~~Confines or restrains an officer, employee, visitor or another inmate of such~~
18 ~~prison or institution~~ a person without the person's consent.

19 **SECTION 7.** 946.43 (2m) (a) of the statutes is amended to read:

20 946.43 (2m) (a) Any prisoner ~~confined to a state prison or other state, county~~
21 ~~or municipal detention facility or detainee~~ who throws or expels blood, semen, vomit,
22 saliva, urine, feces, or other bodily substance at or toward ~~an officer, employee or~~
23 ~~visitor of the prison or facility or another prisoner of the prison or facility~~ a person
24 under all of the following circumstances may be fined not more than \$10,000 or
25 imprisoned for not more than 2 years or both:

BILL

1. The prisoner or detainee throws or expels the blood, semen, vomit, saliva, urine, feces, or other bodily substance with the intent that it come into contact with the ~~officer, employee, visitor or other prisoner person~~.

2. The prisoner or detainee throws or expels the blood, semen, vomit, saliva, urine, feces, or other bodily substance with the intent either to cause bodily harm to the ~~officer, employee, visitor or other prisoner~~ person or to abuse, harass, offend, intimidate, or frighten the ~~officer, employee, visitor or other prisoner~~ person.

3. ~~The officer, employee, visitor or other prisoner person~~ does not consent to the blood, semen, vomit, saliva, urine, feces, or other bodily substance being thrown or expelled at or toward him or her.

SECTION 8. Initial applicability.

(1) This act first applies to acts committed on the effective date of this subsection.

(END)

Ryan, Robin

From: Curt Pawlisch [pawlisch@cwpb.com]
Sent: December 17, 2001 2:41 PM
To: Daniel.Rossmiller@legis.state.wi.us
Cc: Robin.Ryan@legis.state.wi.us
Subject: LRB 2463/3 relating to: battery or assault by a prisoner or detainee

Dan,

For purposes of introducing a companion bill on the Senate side, can you please email Robin Ryan from the LRB at the above email address to put this request in? The request is to take LRB 2463/3 and make it a Senate bill.

Thanks.

--Curt

Curt F. Pawlisch
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Dan Rossmiller 12/20 - Do draft companion



State of Wisconsin
2001-2002 LEGISLATURE

LRB-3986/1

RLR:hmm:pa

In 1/2/01

2001 BILL

RMR

Regem.

1 AN ACT *to renumber and amend* 940.20 (1); *to amend* 940.20 (1) (title), 946.43
2 (title), 946.43 (1m) and 946.43 (2m) (a); and *to create* 940.20 (1) (a) and 946.43
3 (1g) of the statutes; **relating to:** battery or assault by a prisoner or detainee and
4 providing a penalty.

Analysis by the Legislative Reference Bureau

Current law criminalizes several types of assaultive behavior by prisoners:

1. It is a crime for a prisoner to cause bodily harm intentionally to an officer, employee, visitor, or another inmate of a prison or other type of detention facility without the person's consent (battery by a prisoner). The maximum penalty for battery by a prisoner is a fine not to exceed \$10,000^① a term of confinement in prison followed by a term of extended supervision that together may not exceed ten years; or both.

2. It is a crime for a prisoner to place an officer, employee, visitor, or another inmate of a prison or other type of detention facility in fear of immediate and great bodily harm, or to confine or restrain the officer, employee, visitor, or other inmate. The maximum penalty for these offenses is a fine not to exceed \$10,000^① a term of confinement followed by a term of extended supervision that together may not exceed 15 years; or both. ^②

3. It is a crime for a prisoner to throw or expel certain bodily substances at an officer, employee, visitor, or other inmate of a prison or other type of detention facility. The maximum penalty for throwing or expelling bodily substances is a fine not to

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exceed \$10,000, a term of confinement followed by a term of extended supervision that together may not exceed two years, or both.

The term “prisoner” is not defined for any of these assaultive crimes by prisoners. However, courts have held that in the context of the crime of battery by a prisoner, a “prisoner” is a person whose liberty is restrained as a result of a violation of the law or as a means of enforcing the law, and that “prisoner” includes a person who is committed to the department of health and family services upon a finding of not guilty by reason of mental disease or defect, as well as a person who is confined upon revocation of probation. See *In the Interest of C.D.M.*, 125 Wis. 2d 170, at 172–173 (1985); *State v. Skamfer*, 176 Wis. 2d 304 (App. 1993); *State v. Fitzgerald*, 233 Wis. 2d 584 (App. 2000).

This bill applies the prohibitions against assaultive behavior to both prisoners and detainees and defines a “prisoner or detainee” as a person who is arrested or confined because he or she has been accused of committing a crime, alleged delinquent for committing a crime, alleged to be a sexually violent person, convicted or adjudicated delinquent for committing a crime, or committed to the custody of the department of health and family services upon being found not guilty of a crime by reason of mental disease or defect or upon being found to be a sexually violent person.

The bill removes the requirement that the victim of the assaultive crimes be an officer, employee, visitor, or other inmate, and instead criminalizes a prisoner’s or detainee’s assaultive behavior directed at any other person. The bill also clarifies that the crimes prohibiting assaultive behavior by a prisoner apply to acts of a prisoner or detainee that take place while the prisoner or detainee is in the custody of a law enforcement officer, prison guard, or employee of another detention facility or of a state treatment facility, regardless of whether the prisoner or detainee is on the grounds of a prison, other detention facility, or state treatment facility when the prohibited act occurs.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 940.20 (1) (title) of the statutes is amended to read:

2 940.20 (1) (title) BATTERY BY PRISONERS OR DETAINEES.

3 **SECTION 2.** 940.20 (1) of the statutes is renumbered 940.20 (1) (b) and amended

4 to read:

5 940.20 (1) (b) Any prisoner confined to a state prison or other state, county or
6 municipal detention facility or detainee who, while in custody, intentionally causes
7 bodily harm to an officer, employee, visitor or another inmate of such prison or

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1 institution a person, without ~~his or her~~ the consent of the person, is guilty of a Class
2 D felony.

3 **SECTION 3.** 940.20 (1) (a) of the statutes ^{and (c)} ~~is~~ ^{are} created to read:

4 940.20 (1) (a) In this subsection:

5 1. "Custody" means actual custody in a state prison, a state treatment facility,
6 as defined in s. 51.01 (15), a facility for the care of sexually violent persons, as
7 specified in s. 980.065, or another state, county, or municipal correctional or
8 detention facility, or actual or constructive custody of a peace officer or a guard or
9 another employee of a state prison, a state treatment facility, a facility for the care
10 of sexually violent persons, or another state, county, or municipal correctional or
11 detention facility.

12 2. "Prisoner or detainee" means a person arrested or confined because he or she
13 has been accused of committing a crime, alleged delinquent for committing a crime,
14 alleged to be a sexually violent person, convicted of or adjudicated delinquent for
15 committing a crime, committed under s. 971.17 after being found not guilty of
16 committing a crime by reason of mental disease or defect, or committed under s.
17 980.06 as a sexually violent person.

18 **SECTION 4.** 946.43 (title) of the statutes is amended to read:

19 **946.43 (title) Assaults by prisoners or detainees.**

20 **SECTION 5.** 946.43 (1g) of the statutes is created to read:

21 946.43 (1g) In this section:

22 (a) "Custody" means actual custody in a state prison, a state treatment facility,
23 as defined in s. 51.01 (15), a facility for the care of sexually violent persons, as
24 specified in s. 980.065, or another state, county, or municipal correctional or
25 detention facility, or actual or constructive custody by a peace officer or a guard or

(c) A person may not be convicted under both par. (b)
and sub. (a) for the same act.

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1 another employee of a state prison, a state treatment facility, a facility for the care
2 of sexually violent persons, or another state, county, or municipal correctional or
3 detention facility.

4 (b) "Prisoner or detainee" means a person arrested or confined because he or
5 she has been accused of committing a crime, alleged delinquent for committing a
6 crime, alleged to be a sexually violent person, convicted of or adjudicated delinquent
7 for committing a crime, committed under s. 971.17 after being found not guilty of
8 committing a crime by reason of mental disease or defect, or committed under s.
9 980.06 as a sexually violent person.

10 **SECTION 6.** 946.43 (1m) of the statutes is amended to read:

11 946.43 (1m) Any prisoner confined to a state prison or other state, county or
12 municipal detention facility or detainee who, while in custody, intentionally does any
13 of the following is guilty of a Class C felony:

14 (a) Places an officer, employee, visitor or another inmate of such prison or
15 institution a person in apprehension of an immediate battery likely to cause death
16 or great bodily harm; or, -

17 (b) Confines or restrains an officer, employee, visitor or another inmate of such
18 prison or institution a person without the person's consent.

19 **SECTION 7.** 946.43 (2m) (a) of the statutes is amended to read:

20 946.43 (2m) (a) Any prisoner confined to a state prison or other state, county
21 or municipal detention facility or detainee who throws or expels blood, semen, vomit,
22 saliva, urine, feces, or other bodily substance at or toward an officer, employee or
23 visitor of the prison or facility or another prisoner of the prison or facility a person
24 under all of the following circumstances may be fined not more than \$10,000 or
25 imprisoned for not more than 2 years or both:

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1. The prisoner or detainee throws or expels the blood, semen, vomit, saliva, urine, feces, or other bodily substance with the intent that it come into contact with the ~~officer, employee, visitor or other prisoner~~ person.

2. The prisoner or detainee throws or expels the blood, semen, vomit, saliva, urine, feces, or other bodily substance with the intent either to cause bodily harm to the ~~officer, employee, visitor or other prisoner~~ person or to abuse, harass, offend, intimidate, or frighten the ~~officer, employee, visitor or other prisoner~~ person.

3. ~~The officer, employee, visitor or other prisoner~~ person does not consent to the blood, semen, vomit, saliva, urine, feces, or other bodily substance being thrown or expelled at or toward him or her.

SECTION 8. Initial applicability.

(1) This act first applies to acts committed on the effective date of this subsection.

(END)

Barman, Mike

From: McGrorty, Megan
Sent: Wednesday, January 09, 2002 3:53 PM
To: LRB.Legal
Subject: LRB 3986/2

Could you please have LRB 3986/2 jacketed for the Senate?
thanks